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No. 96-1542

In the Supreme Court of the United States

OCTOBER TERM, 1996

FEDERATION FOR AMERICAN IMMIGRATION REFORM, INC., PETITIONER

v.

JANET RENO, ATTORNEY GENERAL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner has standing to challenge the Attorney General's policy of paroling certain Cuban nationals into the United States in anticipation of subsequently adjusting their status to that of lawful permanent residents, which was adopted to implement an agreement with Cuba to prevent uncontrolled mass migration to the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 93 F.3d 897. The opinion of the district court (Pet. App. 28a-48a) is reported at 897 F. Supp. 595.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1996. A petition for rehearing was denied on December 30, 1996. Pet. App. 49a. The petition for a writ of certiorari was filed on March 28, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case presents a challenge brought under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, to an immigration policy adopted by the United States government in response to a recent emergency involving dangerous and uncontrolled mass migration from Cuba. On August 8, 1994, the government of Cuba announced that it would no longer prevent irregular departures from Cuba by sea. That announcement immediately precipitated a massive flow of Cubans to the United States aboard flimsy makeshift rafts and other unsafe vessels. In response to the emergency, the President reversed the United States government's previous policy of bringing Cubans rescued at sea to the United States. Instead, the President directed the Coast Guard to intercept fleeing Cubans at sea, and to transport them to the United States Naval Base at Guantanamo Bay, Cuba, or other safe havens, for repatriation or resettlement. The President also dispatched State Department officials to negotiate an agreement with Cuba to end the uncontrolled migration and to normalize migration between the two countries. See Pet. App. 31a-34a; *Cuban-American Bar Ass'n* v. *Christopher*, 43 F.3d 1412, 1417-1418 (11th Cir.), cert. denied, 115 S. Ct. 2578 (1995) and 116 S. Ct. 299 (1995).

On September 9, 1994, the governments of the United States and Cuba reached an agreement that ended the emergency. Under the agreement, embodied in a Joint Communique, Cuba resumed its policy of discouraging its citizens from unlawfully emigrating to the United States by boat. The United States, in turn, agreed to increase the allowable migration of Cubans to the United States. In particular, the

United States agreed to ensure the legal immigration of 20,000 Cuban nationals per year, not including immediate relatives of United States citizens (who are entitled to a significant immigrant visa preference that does not involve a waiting list). See Pet. App. 2a, 33a. To implement the agreement embodied in the Joint Communique, the United States established three policies: first, expanding immigration opportunities for family members of Cubans who have already been issued visas or granted refugee status; second, expanding eligibility for admission to the United States of Cuban nationals who qualify as refugees under the Immigration and Nationality Act (INA), see 8 U.S.C. 1157; and third, paroling into the United States a number of Cuban nationals chosen by lottery from an applicant pool based on factors such as language skills, job skills, education level, family ties, and discrimination in Cuba, and screened for admissibility requirements such as medical, criminal, and public-charge criteria for exclusion. Pet. App. 34a; C.A. App. 68-77.

Under the third policy, once a Cuban national has been allowed to come to the United States, been granted parole, and been physically present in the United States for one year, then the Attorney General may adjust his or her status to that of a lawful permanent resident, pursuant to the authority granted under Section 1 of the Cuban Refugee Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966), as amended by the Refugee Act of 1980, Pub. L. No. 96-212, § 203(i), 94 Stat. 108 (see 8 U.S.C. 1255 note). If the Attorney General determines that a Cuban national is not eligible for adjustment to permanent resident status, the INS either will take the alien into custody for exclusion proceedings or will

continue the parole in accordance with regulations. See 8 C.F.R. 212.5(d)(2)(i).

The third policy, which is the policy challenged in this case, was based on the Attorney General's authority under Section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A) (1988), "in her discretion to parole into the United States temporarily under such conditions as [she] may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States."[1] The exercise of the Attorney General's parole authority at issue in this case was deemed to be "in the public interest" because it deterred uncontrolled and dangerous mass migration and promoted a legal and orderly migration flow. See C.A. App. 31; *Immigration and Naturalization Service's General Operations: Hearing Before the Subcomm. on International Law, Immigration, and Refugees of the House Judiciary Comm.*, 103d Cong., 2d Sess. 91 (1994) (testimony of INS Commissioner Meissner). The same parole authority had been used in the past to permit "boat people" fleeing Indochina and certain nationals of the Soviet Union who had not qualified as refugees under the INA to come to the United States. See *id.* at 65-66, 91.

2. On November 16, 1994, petitioner filed this lawsuit on behalf of its 1,400 members in Dade County, Florida, seeking injunctive relief against the Attorney General's parole of Cuban nationals into the United States and adjustment of their status to that

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[1] Section 212(d)(5)(A) was amended by Section 602(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C., 110 Stat. 3009-689. That amendment is discussed at pp. 9, 18-19, *infra*.

of lawful permanent residents. Petitioner claimed, among other things, that the Attorney General's policy would unlawfully (a) permit aliens to remain in the United States permanently pursuant to parole authority that allows aliens to remain here only temporarily; (b) grant temporary protected status to nationals of an ineligible country; (c) issue immigrant visas, and discriminate in the issuance of immigrant visas on the basis of nationality; and (d) adjust the status of aliens who are ineligible for adjustment under the Cuban Refugee Adjustment Act. Pet. App. 51a-68a.

The district court dismissed the complaint on the ground that petitioner lacked Article III standing to challenge the Attorney General's policy. Pet. App. 28a-48a. The court noted that petitioner had alleged that its members in Dade County "will be confronted with overcrowded public schools, decreased access to public medical facilities, reduced police protection and diminished employment opportunities." *Id.* at 34a. The court concluded, however, that petitioner could not establish that those injuries were either fairly traceable to the challenged action or likely to be redressed by a favorable judicial decision. As to traceability, the court held that "[t]here are simply too many independent variables in the chain of causation linking [the challenged] actions with [petitioner's] injuries," because the Cuban migrants might not settle in Dade County, and because the alleged injuries might be abated by independent actions of the political branches of the Florida government. *Id.* at 44a-45a. As to redressability, the court stressed that, even if the Attorney General's policy were invalidated, the same number of Cuban migrants might arrive through lawful means or

through uncontrolled migration, either of which would create the same pressures on public services in Dade County. *Id.* at 46a.

3. A divided panel of the court of appeals affirmed the dismissal of the complaint. Pet. App. 1a-13a. The court ruled that, even if petitioner had Article III standing, petitioner lacked standing under the APA because the interests asserted in its complaint were not within the "zone of interests" that Congress sought to protect under the statutory provisions of the INA alleged to have been violated. *Id.* at 4a-13a. Judge Rogers dissented, and would have held that petitioner had standing. *Id.* at 13a-27a.

The court of appeals considered and rejected three grounds that petitioner claimed as bases for its standing under the APA. First, the court noted that petitioner argued that a "rush of immigrants" to Dade County would generate unemployment and wage reductions in the area and would place burdens on public services there. But, the court concluded, neither the language nor the legislative history of the statutes alleged to have been violated "even hints" at congressional concern about the *regional* impact of immigration. Pet. App. 6a. The court stated that "brief references to regional effects" of immigration in the legislative history of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3394, were not related to the statutes that are the bases for the legal challenges in this case, and it concluded that those references "do little to establish that individuals living in immigration-impacted areas are either beneficiaries of, or otherwise suitable challengers under, the apparently unrelated statutory provisions that [petitioner] claims the government violated here." Pet. App. 7a.

Second, the court considered and rejected the possibility that legal residents throughout the United States might have standing on the basis of their interest in avoiding immigration-related unemployment and stresses on the provision of government services. "[T]he widespread nature of this alleged interest, indeed its near universality," suggested to the court that it was not a proper basis for a challenge under the APA to the admission of aliens. Pet. App. 7a-8a. While the court did not hold that Congress was *unable* to vest standing in a member of the general public to challenge admission of aliens, it did observe that "[t]he injury (if any) to a citizen qua citizen from admission of an alien is an injury common to the entire population, and for that reason seems particularly well-suited for redress in the political rather than the judicial sphere." *Id.* at 8a.

The court acknowledged that it saw "little that pushes us one way or the other in discerning whether Congress intended to permit suit by members of this broad class [of legal residents in the country]." Pet. App. 9a. It further noted that, under its precedents, an "affirmative signal" of congressional intent to permit suit is not required for a finding of standing under the APA. But, the court observed, the *absence* of a clear congressional intent to forbid the suit does not automatically *confer* standing on a plaintiff, and the court must examine the particular character of the asserted interest and the particular context in which the challenge arises to determine whether Congress intended to permit suit at the behest of a particular plaintiff. *Id.* at 9a-10a.

To the court, the "immigration context" made it doubtful that Congress intended to permit suit by those who "identify themselves as likely to suffer

from the generic negative features of immigration." Pet. App. 10a. The court noted that there was little reason for Congress to believe that immigration authorities would be subject to "acute pressure from powerful pro-immigration interest groups," such that Congress might have wanted to create a counterbalancing force in "universal litigative champions." *Ibid.* In the court's view, the immigration context contrasted sharply with environmental regulation, in which government agencies may be subject to pressure by powerful interest groups (regulated firms) that Congress might deem to be distorting influences. In the context of environmental law, the court suggested, it was therefore more reasonable to conclude that Congress wanted "universal champions" to vindicate the legal interest in the environment. *Ibid.* The court further observed that the injury alleged in this case is even more diffuse than injuries alleged in environmental cases, since the injury alleged to result from increased immigration "appears no different from the crowding effect that might be expected from any abrupt surge in the adult population." *Ibid.*

Finally, the court of appeals found insufficient petitioner's alleged employment-based interest in limiting immigration. Pet. App. 11a-13a. The court acknowledged that some provisions of the INA limiting the issuance of immigrant visas do reflect a "clear concern" about protecting job opportunities for United States citizens. *Id.* at 11a-12a. The court stressed, however, that petitioner was not alleging that the Attorney General's parole policy violated those particular statutory limitations. While the court observed that "we do not look at the specific provision said to have been violated in complete isolation," it noted that this Court had stated that courts

applying the zone-of-interest analysis must look only to provisions "having an 'integral relationship' with the provisions under which the suit was brought." *Id.* at 12a (quoting *Air Courier Conference* v. *American Postal Workers Union*, 498 U.S. 517, 530 (1991)). Finding no "integral relationship" between the numerical limitations on immigration in the INA and the specific statutory provisions alleged by petitioner to have been violated, the court concluded that petitioner lacked standing under the APA. Pet. App. 13a.

4. On September 30, 1996, the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-689, the most significant revision of the immigration laws in 70 years. Section 602 of the IIRIRA modified the Attorney General's parole authority under 8 U.S.C. 1182(d)(5)(A) by requiring it to be exercised "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." See Pet. App. 70a-71a. Section 602 also directs the Attorney General to provide to both Houses of Congress a yearly report of the total number of aliens paroled into the United States, the purpose and duration of their parole, and the country of their nationality. See IIRIRA § 602(b), 110 Stat. 3009-689 to 3009-690.

ARGUMENT

Petitioner argues that the interests it asserts on behalf of its members in Dade County fall within the "zone of interests" protected by the INA's restrictions on the Attorney General's authority to permit migration to the United States, and that it therefore has standing to challenge the Attorney

General's parole policy. Petitioner maintains that Congress has been concerned about the negative effects of excessive immigration on such matters as employment and public services, and that the provisions that form the basis for its challenge to the parole policy are integrally related to its members' interest in avoiding those negative effects. That contention does not provide a basis for petitioner to sue under the APA. Moreover, petitioner cannot in any event make the necessary threshold showing that it or its members have Article III standing to challenge the parole policy. In addition, no other court of appeals has held that the Attorney General's decision to grant parole is subject to review under the APA. Further review is therefore not warranted.

1. Petitioner's claim does not present a matter that is subject to judicial review under the APA. The Attorney General's decision, through an exercise of her parole authority, to permit an alien to be physically present in the United States without the restraint of custody is committed by law to her discretion. Petitioner contends that certain limitations in the INA make unlawful the Attorney General's decision to permit the paroled Cubans to reside in the United States. That claim, however, cannot surmount the general presumption of unreviewability of agency decisions concerning the enforcement against third parties of laws intended to preserve the public welfare. *Heckler* v. *Chaney*, 470 U.S. 821, 834 (1985). Cf. *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 619 (1973) (holding that a private citizen generally lacks a judicially cognizable interest in the prosecution of another).

Nothing in the INA suggests that Congress intended to reverse that presumption, and to allow

residents of the United States to challenge under the APA the Attorney General's decision to allow unadmitted aliens to remain in the country and at liberty. To the contrary, Section 1182(d)(5)(A) provides that the Attorney General may, "in her discretion," parole aliens into the United States "under such conditions as [s]he may prescribe," if she determines that the parole will provide a "significant public benefit." 8 U.S.C. 1182(d)(5)(A) (Pet. App. 70a). That language "commit[s] complete discretion" to the Attorney General to decide whether to place aliens in exclusion or deportation proceedings, or whether (by contrast) to exercise her parole authority. Cf. *Chaney*, 470 U.S. at 835. Congress has recognized that the Attorney General "is far better equipped than the courts to deal with the many variables involved in the proper ordering of [the relevant] priorities," *id.* at 831-832, and accordingly has not authorized judicial review of the decision to grant parole.

The structure and context of the INA also suggest that Congress has precluded judicial review of the Attorney General's decision to grant parole. In the INA, Congress has created certain limited and carefully focused avenues of judicial review of immigration decisions. For example, Congress has provided in the INA that certain aliens who are subject to the coercive power of the government through the entry of deportation orders may petition for review of those orders in the courts of appeals. INA § 106, 8 U.S.C. 1105a (1994).[2] Congress has not, however,

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[2] In Section 306 of IIRIRA, the judicial review provisions of the INA were replaced, effective April 1, 1997, by a new

established any similar avenue for members of the public to gain judicial review of the Attorney General's decision *not* to deport an alien. "In the context of the statute's precisely drawn provision[s], the omission [of judicial review of the Attorney General's decision to grant parole] provides persuasive evidence that Congress deliberately intended to foreclose further review of [petitioner's] claims." *United States* v. *Erika, Inc.*, 456 U.S. 201, 208 (1982); see *Block* v. *Community Nutrition Institute*, 467 U.S. 340, 346-347 (1984).

The immigration context lends particular force to the conclusion that Congress has precluded review of petitioner's claims. This Court has repeatedly expressed reluctance to interfere in the Executive Branch's decisions to admit or exclude aliens, absent express authorization of review by Congress. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952); *Heikkila* v. *Barber*, 345 U.S. 229, 233-234 (1953); *Fok Yung Yo* v. *United States*, 185 U.S. 296, 305 (1892). In light of this "recognized and declared policy," *ibid.*, of judicial nonintervention, the absence of any express provision for review of the Attorney General's exercise of her parole authority is persuasive evidence that Congress precluded such review.

2. Petitioner also lacks Article III standing to sue in this case. Petitioner has based its claim to standing on the allegation that, "as a result of the new Cuban immigration programs, its members residing in [Dade County] will be confronted with overcrowded public schools, decreased access to public medical facilities, reduced police protection, and diminished

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Section 242 of the INA, to be codified at 8 U.S.C. 1252. 110 Stat. 3009-607.

employment opportunities." Pet. App. 34a. As the district court concluded, however, petitioner cannot show that its alleged injuries are either fairly traceable to the challenged actions or likely to be redressed by a favorable judicial decision. *Id.* at 43a-46a. "There are simply too many independent variables in the chain of causation linking [respondents'] actions with [petitioner's] injuries." *Id.* at 44a.

This is not a case in which the plaintiff challenging the governmental action is itself an object of the action at issue. Rather, petitioner's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of someone else, namely, the Cuban nationals paroled into the United States. In such a situation, "much more is needed" than bare allegations of harm to the plaintiff, because "causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 562 (1992). Petitioner has the burden of alleging (and eventually proving) facts "showing that these [responses] have been or will be made in such a manner as to produce causation and permit redressability of injury." *Ibid.* Petitioner's standing is not precluded by the difficulty of accounting for third-party actions, but standing here is "'substantially more difficult' to establish" than in the routine case in which a regulated party challenges the government's treatment of it. *Ibid.*; see *Warth* v. *Seldin*, 422 U.S. 490, 503-507 (1975).

Petitioner has failed to allege facts indicating that its asserted injuries are traceable to the challenged actions of the government. As the district court pointed out, the Attorney General's parole plan does

not require the admitted Cubans to settle in Dade County. The Cuban migrants will be given documentation to enter at any port of entry in the United States and may settle anywhere in the United States. Pet. App. 45a. Further, there is no basis for assuming that the alleged injuries petitioner's Dade County members may experience in the future (*e.g.*, crowding of schools and health care facilities, and increased competition for jobs) will be attributable to settlement by the paroled Cuban immigrants. Petitioner "ignores the common fact that Florida is a desirable place to live. Indeed, for many years there has been a constant flow of immigration into Florida from not only Cuba but also from other countries as well as from citizens of the United States." *Ibid.* Petitioner has not alleged or pointed to facts indicating that any crowding effects will be caused by any incremental migration of Cubans to Dade County that may be attributable to the challenged parole policy, rather than the general trend of settlement to Florida from other parts of the country and from other countries.

For similar reasons, petitioner has failed to allege facts sufficient to show that its injury can be redressed by a favorable judicial decision. Even if the courts were to declare invalid the Attorney General's exercise of her parole authority, it would still be possible for Cubans in similar numbers to enter the United States, legally or illegally. Pet. App. 46a. Moreover, settlement of non-Cubans in Dade County might well continue. Thus, "[t]he public schools would be just as overcrowded, the public health facilities would be just [as] overburdened, the police department would be just as overworked and the job market would be just as oversaturated." *Ibid.* And, petitioner has not alleged any facts indicating that

the politically accountable authorities of Florida and Dade County will fail to take action to ameliorate any crowding of schools, health facilities, and the like that may result from immigration and increased development in Florida. Cf. *ASARCO, Inc.* v. *Kadish*, 490 U.S. 605, 614-615 (1989) (opinion of Kennedy, J., for four of eight Justices) (concluding that taxpayers and schoolteachers lacked standing to challenge state mineral leases, because intervening "policy decisions might be made in different ways by the governing officials," and those "unfettered choices made by independent actors" were not within the courts' power "either to control or to predict").

Finally, petitioner's complaint does not suggest which schools its members' children might be entering along with the children of immigrants, which job markets its members might be entering in competition with Cuban immigrants, or which public health facilities might be overtaxed by Cuban immigration. Those failings indicate that petitioner has not even alleged injury in fact sufficient to survive a motion to dismiss. See *Warth*, 422 U.S. at 516-517. Petitioner therefore lacks constitutional standing to challenge the Attorney General's exercise of her parole authority in this case.

3. a. The court of appeals correctly ruled that petitioner in any event lacks "prudential standing" under the APA to challenge the Attorney General's exercise of her parole authority. As the court concluded, there is no evidence that Congress intended, in the provisions alleged to have been violated, to protect residents of particular regions affected by immigration, Pet. App. 6a-7a, or to permit a judicial challenge to the exercise of immigration authority based on the "near-universal character of the assert-

ed interest of citizens qua citizens" in ensuring that public services and facilities are not overburdened, *id.* at 9a. And petitioner has not shown that any interest its members may have in avoiding the allegedly deleterious effects of increased immigration is related to the provisions on which its challenge is based. *Id.* at 11a-13a.

As this Court has explained, a plaintiff who seeks review of agency action under the APA "must establish that the injury he complains of * * * falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Bennett* v. *Spear*, 117 S. Ct. 1154, 1167 (1997) (quoting *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 883 (1990)); see *Association of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 153 (1970). A plaintiff's standing under the APA thus requires more than injury in fact; it also requires that the statutory provision relied on have been intended "for the benefit of" the person or class of persons asserting the challenge. See *Air Courier Conference* v. *American Postal Workers Union*, 498 U.S. 517, 526 (1991). While this Court has not required an express statement in the statute or legislative history that Congress enacted the statute for the benefit of the plaintiffs, see *Clarke* v. *Securities Indus. Ass'n*, 479 U.S. 388, 398-400 (1987), it has required the plaintiff must show that it is seeking to vindicate "the *sorts* of interests those statutes were specifically designed to protect," *National Wildlife Fed'n*, 497 U.S. at 886.

Petitioner cannot make that showing in this case. Petitioner argues that Congress expressed concern, in the legislative history of 1921, 1965, and 1986 immigration legislation, that uncontrolled immigra-

tion would lead to regional congestion, unemployment, and housing shortages, and that Congress has also from time to time noted the need to protect the domestic labor market from an influx of immigrant labor. Thus, petitioner argues, Congress placed numerical limits on the level of permissible immigration to minimize those negative consequences of immigration. Even if we accept, however, that Congress has been concerned about the potentially negative consequences of excessive immigration, petitioner's interest in avoiding those consequences is not related to the statutory provisions that form the bases for its challenge in this case.

Petitioner argues principally that the parole policy violates statutory limitations on the Attorney General's discretionary authority to grant parole. That argument misconceives the nature and purpose of both the parole authority and its limitations. Parole is an exception to the statutory direction that the Attorney General detain aliens pending a determination of their admissibility and immediately return them to their country of departure if they are deemed inadmissible. See 8 U.S.C. 1222, 1225, 1226(e); *Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958). Parole is intended to protect the interests of the sovereign and the aliens by affording needed flexibility. *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 215 (1953) ("While the government might keep entrants by sea aboard the vessel pending determination of their inadmissibility, resulting hardships to the alien and inconvenience to the carrier persuaded Congress to adopt a more generous course."); see also *Jean* v. *Nelson*, 727 F.2d 957, 971-972, 975 (11th Cir. 1984) (en banc), aff'd on other grounds, 472 U.S. 846 (1985).

The statutory limitations on the Attorney General's parole authority are designed principally to ensure that Congress retains primary authority to set immigration policy, not to protect distinct interests of citizens and legal residents in avoiding the detrimental effects of an excessive influx of immigrants. In a sense, the Attorney General's parole authority might be said to be related to *all* the restrictions, substantive and numerical, on immigration contained in the INA. "But if that were enough, then *every* provision constraining the admission of anyone under any circumstances (including any provision *allowing* the admission of anyone, for all such permissive provisions necessarily have their limits) would be pertinent in applying the zone-of-interests test to *any* provision" of the INA. Pet. App. 13a.[3]

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[3] Petitioner suggests (Pet. 7) that the legislative history of the IIRIRA indicates congressional disapproval of the parole program challenged here. That submission is incorrect. The legislative history cited by petitioner relates to unenacted provisions that would have specified the instances in which an alien might be paroled—thus largely eliminating the flexibility and discretion of the parole provision—and would have introduced a new category of "humanitarian visa" that would have permitted the Attorney General to admit up to 10,000 aliens each year. See H.R. 2202, 104th Cong., 2d Sess. §§ 523-524 (1996). The legislative history of that rejected provision reflects criticism of the Cuban parole program. H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. I, at 140-141 (1996). Even that legislative history, however, suggests that Congress was concerned, not with the negative effects of increased population, but with preserving Congress's authority over immigration policy. *Id.* at 141, 175. Rather than enact the proposed revision of parole, Congress maintained the discretion of the Attorney General (with some modification) to parole aliens into the United States, and directed the Attorney General to report

Petitioner has also argued that the parole policy violates the Cuban Refugee Adjustment Act, which permits the Attorney General to adjust to permanent resident status those paroled Cuban nationals who are eligible to receive an immigrant visa and are admissible into the United States. There is no indication in the background of the Cuban Adjustment Act that those provisions have anything to do with the injuries that petitioners claim to suffer from parole of Cuban nationals into the United States. Petitioner is arguing, in essence, that all Cubans seeking permanent resident status in the United States must be subject to the INA's numerical limits on immigrant visas and may not be admitted under any other provision. Even if that point were correct on its merits (which it is not),[4] petitioner has pointed to nothing to indicate that Congress was directly concerned about the detrimental effects on residents' access to employment and public services when it specified which Cubans might be granted parole and permanent resident status under the Cuban Adjustment Act.[5]

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yearly to Congress concerning the exercise of parole, so that Congress could exercise appropriate oversight. That provision for oversight strongly reinforces the conclusion that enforcement of limitations on the Attorney General's exercise of her parole authority is a matter between the political Branches.

[4] See *Silva* v. *Bell*, 605 F.2d 978, 981 (7th Cir. 1979); *Federation for American Immigration Reform* v. *Meese*, 643 F. Supp. 983, 987 (S.D. Fla. 1986) (Cubans paroled and adjusted under Cuban Refugee Adjustment Act not subject to numerical limits on immigrant visas or substantive preference categories).

[5] Petitioner has also alleged that the challenged parole policy violates 8 U.S.C. 1254a(g), which permits the Attorney General to grant "temporary protected status" to an otherwise deportable alien from a designated country, but provides that such temporary protected status is the "exclusive authority" of

Similarly, the interests asserted by petitioner are not within the zone of interests protected by the INA's statutory prohibition against discrimination in the issuance of visas on the basis of nationality, 8 U.S.C. 1152(a)(1). The prohibition against nationality-based discrimination and preference concerns only the relative treatment of nationals of various countries who are seeking admission to the United States; it is not intended to control or reduce the total amount of immigration, or ameliorate the adverse effect of immigration inside the United States. Section 1152(a)(1) therefore has no relation to the injuries that petitioner's members claim they will suffer as a consequence of the parole policy.

b. As the court of appeals observed, it is not reasonable to infer that Congress would have intended to permit a judicial challenge to immigration policies based on the interest of "legal residents throughout the United States" in employment and public services. Pet. App. 7a-8a. Petitioner points out that individuals with particularized injuries may sue to challenge government action, even if those injuries are widespread. Pet. 21-23. But while the fact that an injury is widespread does not necessarily bar

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the Attorney General to decline to deport such aliens because of their particular nationality. That provision creates a mechanism by which the Attorney General may offer a temporary safe haven to aliens because of disruptions in their home countries such as armed conflict, disaster, and other temporary and extraordinary conditions. As with the restrictions on the parole authority discussed in the text, there is no direct relation between the restriction on the Attorney General's authority to grant temporary protected status and the various interests in resisting increased immigration asserted by petitioner.

standing under Article III, it is relevant to the inquiry whether Congress intended such an injury to the basis for a challenge under the APA. Under petitioner's theory, anyone in the country could argue that the admission of any alien could adversely affect him. If the interest of any legal resident in avoiding any deleterious effect of immigration were a sufficient basis for standing, then immigration policies of the Attorney General would effectively be subject to universal challenge. Yet "even when the plaintiff has alleged redressable injury sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-475 (1982). Because Congress legislates against that understanding, it is not reasonable to conclude that Congress intended to confer petitioner a right to sue under the APA.

These failings are not remedied by the fact that petitioner has suggested that Congress was particularly concerned about the impact of immigration on certain regions. For standing, it is not sufficient for petitioner to argue that immigration will have a regional impact; petitioner must show that it, or its members, are themselves "among the injured." *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972). For purposes of standing, there must be an impact on the individual seeking relief; "a party seeking review must allege facts showing that he is himself adversely affected." *Id.* at 740. It adds nothing to petitioner's claim to standing, therefore, that Con-

gress might have been concerned about the regional effects of immigration, for petitioner must show that the particular provisions allegedly violated were intended by Congress to protect *its members'* individual interests in being free from deleterious effects of immigration. Cf. *Blessing* v. *Freestone*, 117 S. Ct. 1353, 1362 (1997) (in action brought under 42 U.S.C. 1983, plaintiff must show that statute "give[s] rise to individual rights," and does not just compel agency adherence to federal law).

In rejecting petitioner's theory of universal standing, the court of appeals correctly recognized that immigration policies are fundamentally different from other regulatory policies that are subject to challenge at the behest of many citizens, such as agency interpretations of the environmental laws. Pet. App. 10a-11a. Petitioner argues that the court of appeals' discussion on this point improperly analyzes standing based on a balancing of the political significance of various interest groups affected by the pertinent regulatory process. Pet. 23-25. We do not read the court of appeals' decision to adopt such a mode of analysis. Rather, the court made the sensible context-based observations that the government's power over immigration, unlike the power to regulate the environment, is a quintessentially political power customarily committed to the discretion of the political Branches of government, and that private interests ordinarily do not play as significant a role in the exercise of that authority. In any event, the court of appeals' more significant point was its further observation that the injury asserted here "is as diffuse as can be imagined" and is "borderless and universal in a way that even environmental injury is not." Pet. App. 10a-11a. As a result, it is not reason-

able to conclude that Congress intended to permit immigration policies to be challenged under the APA at the behest of any legal resident who might claim that his or her well-being would be impaired by increased immigration.

4. This Court has granted review to decide whether banks fall within the "zone of interests" of a provision of the Federal Credit Union Act permitting credit union membership by groups with a "common bond," 12 U.S.C. 1759, and therefore have standing under the APA to challenge an interpretation of that provision by the National Credit Union Administration. *National Credit Union Administration* v. *First National Bank & Trust Co.* (*NCUA* v. *First National Bank*), cert. granted, No. 96-843 (Feb. 24, 1997). The petition in this case, however, need not be held for *NCUA* v. *First National Bank*, for it is unlikely that the Court's decision in that case would affect the outcome in this case. In *NCUA* v. *First National Bank*, the government has argued that the D.C. Circuit erred in applying an APA standing test that accords standing, even in the absence of any demonstrable congressional benefit to the plaintiff, when there is "some indicator that the plaintiff is a peculiarly suitable challenger of administrative neglect." See 96-843 Gov't Br. 22-26 (arguing that D.C. Circuit's "suitable challenger" test is inconsistent with this Court's more restrictive APA standing decisions); *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 277, 283 (D.C. Cir. 1988), cert. denied, 490 U.S. 1106 (1989).[6] In this case, however, the court of appeals ruled that petitioner

[6] We are providing petitioner with a copy of our brief on the merits in *NCUA* v. *First National Bank*.

does not have APA standing even under its "suitable challenger" test. See Pet. App. 4a. Thus, even if this Court were to sustain the D.C. Circuit's decision in *NCUA* v. *First National Bank* as a proper exposition of APA standing, the lower courts would still find that petitioner lacked standing in this case. If, on the other hand, this Court were to hold in *NCUA* v. *First National Bank* that a more rigorous analysis of standing should be applied in APA cases, then petitioner would lack standing *a fortiori*. Moreover, as we explain above, petitioner's suit fails for the additional reasons that petitioner lacks Article III standing and that the challenged parole decisions are commited to the discretion of the Attorney General and precluded from review under the APA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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